FILE COPY

IN THE

Supreme Court of the United States

OCTOBER TERM, 1931

No. 498

TRANSIT COMMISSION and WILLIAM G. FULLEN, LEON G. GODLEY and CHARLES C. LOCKWOOD, constituting the TRANSIT COMMISSION,

Appellants,

against

THE UNITED STATES OF AMERICA, THE LONG ISLAND RAILROAD COMPANY, and INTERSTATE COMMERCE COMMISSION,

Appellees.

STATE OF NEW YORK,

Appellant,

against

THE UNITED STATES OF AMERICA, THE LONG ISLAND RAILROAD COMPANY, and INTERSTATE COMMERCE COMMISSION,

Appellees.

STATEMENT AS TO JURISDICTION ON APPEAL.

GEORGE H. STOVER,
Solicitor for Appellant Transit Commission.

JOHN J. BENNETT, JR.,
Solicitor for Appellant State of New York.

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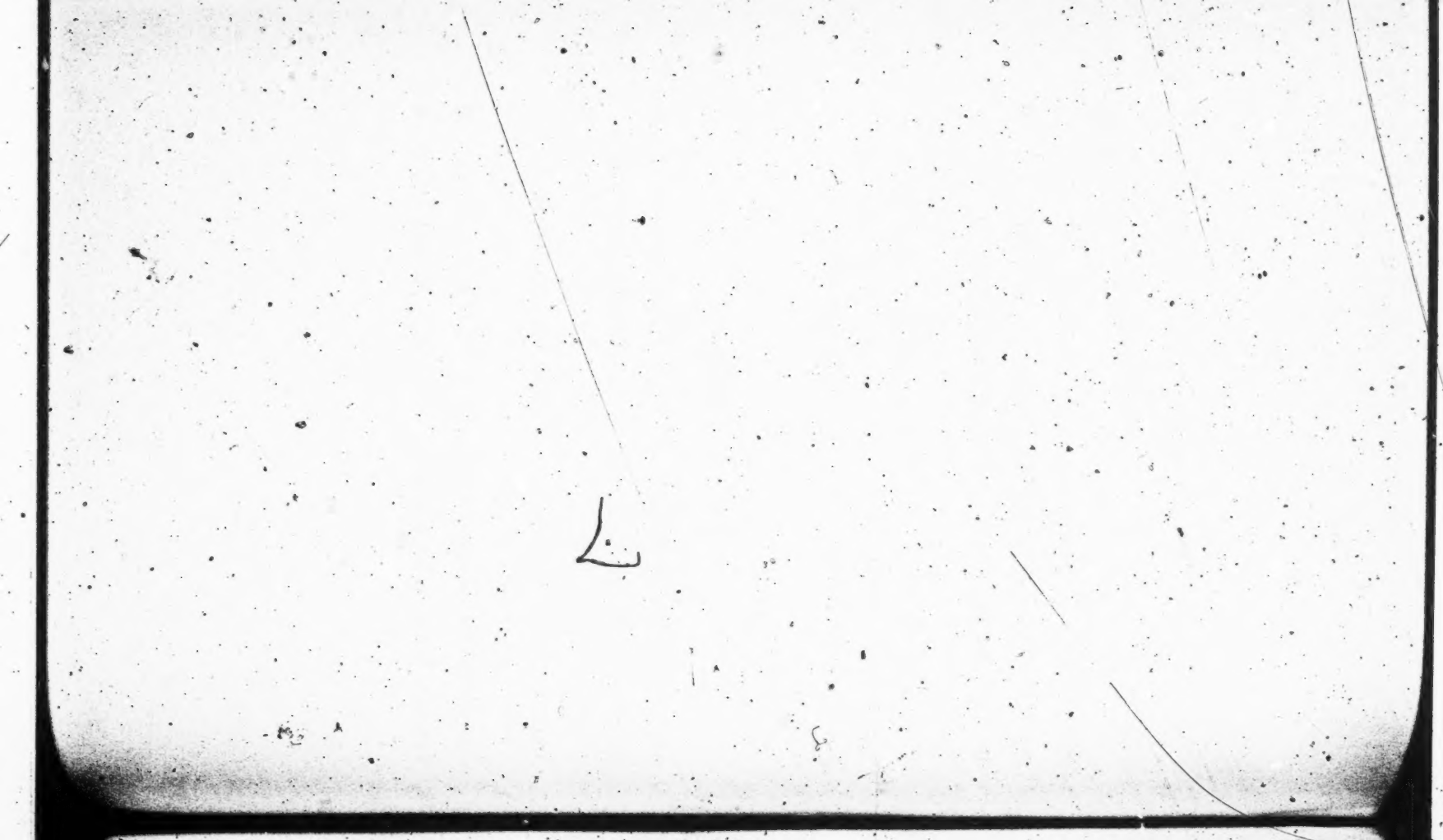

IN THE

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TRANSIT COMMISSION and WILLIAM G. FULLEN, LEON G. GODLEY and CHARLES C. LOCKWOOD, constituting the TRANSIT COMMISSION, Appellants, against UNITED STATES OF AMERICA, THE LONG ISLAND RAILROAD COMPANY, and INTERSTATE COMMERCE COMMISSION, Appellees.	No. 498
STATE OF NEW YORK, Appellant, against UNITED STATES OF AMERICA, THE LONG ISLAND RAILROAD COMPANY, and INTERSTATE COMMERCE COMMISSION, Appellees.	

STATEMENT AS TO JURISDICTION ON APPEAL.

May it please the Court:

The appellants, in support of the jurisdiction of this Court to review the above entitled cause on appeal, respectfully represent:

A.

Statutory Provisions Sustaining Jurisdiction.

Sections 41, 41-(27), 41-(28), 44, 47 and 47a, Title 28 of the United States Code, being the Act of Congress approved June 30, 1926, provide as follows:

"Sec. 41. *Original jurisdiction.* The district courts shall have original jurisdiction as follows:"

"Sec. 41, subd. (27). *Enforcement of orders of Interstate Commerce Commission.* Twenty-seventh. Of all cases for the enforcement, otherwise than by adjudication and collection of a forfeiture or penalty or by infliction of criminal punishment, of any order of the Interstate Commerce Commission other than for the payment of money. (June 18, 1910, c. 309, Sec. 1, 36 Stat. 539; Mar. 3, 1911, c. 231, Sec. 207, 36 Stat. 1148; Oct. 22, 1913, c. 32, 38 Stat. 219.)"

"Sec. 41, subd. (28). *Setting aside order of Interstate Commerce Commission.* Twenty-eighth. Of cases brought to enjoin, set aside, annul, or suspend in whole or in part any order of the Interstate Commerce Commission. (June 18, 1910, c. 309, Sec. 1, 36 Stat. 539; Mar. 3, 1911, c. 231, Sec. 207, 36 Stat. 1148; Oct. 22, 1913, c. 32, 38 Stat. 219.)"

"Sec. 44. *Procedure in certain cases.* The procedure in the district courts in respect to cases of which jurisdiction is conferred upon them by subdivisions 27 and 28 of section 41 of this title, and sections 20 and 43 of Title 49, shall be as provided in section 45 of this title. The orders, writs, and processes of the district courts may in these cases run, be served, and be returnable anywhere in the United States. (Oct. 22, 1913, c. 32, 38 Stat. 220; Feb. 13, 1925, c. 229, Sec. 1, 43 Stat. 938.)"

"Sec. 47. *Interlocutory injunctions as to orders of Interstate Commerce Commission; appeal to*

Supreme Court. No interlocutory injunction suspending or restraining the enforcement, operation, or execution of, or setting aside, in whole or in part, any order made or entered by the Interstate Commerce Commission shall be issued or granted by any district court of the United States, or by any judge thereof, or by any circuit judge acting as district judge, unless the application for the same shall be presented to a circuit or district judge, and shall be heard and determined by three judges, of whom at least one shall be a circuit judge, and unless a majority of said three judges shall concur in granting such application. When such application as aforesaid is presented to a judge, he shall immediately call to his assistance to hear and determine the application two other judges. Said application shall not be heard or determined before at least five days' notice of the hearing has been given to the Interstate Commerce Commission, to the Attorney General of the United States, and to such other persons as may be defendants in the suit. In cases where irreparable damage would otherwise ensue to the petitioner, a majority of said three judges concurring may, on hearing, after not less than three days' notice to the Interstate Commerce Commission and the Attorney General, allow a temporary stay or suspension, in whole or in part, of the operation of the order of the Interstate Commerce Commission for not more than sixty days from the date of the order of said judges pending the application for the order or injunction, in which case the said order shall contain a specific finding, based upon evidence submitted to the judges making the order and identified by reference thereto, that such irreparable damage would result to the petitioner and specifying the nature of the damage. The said judges may, at the time of hearing such application, upon a like finding, continue the temporary stay or suspension in whole or in part until decision upon the application. The hearing upon such application for an interlocutory injunction shall be given precedence and shall be in every way expedited and be assigned for a hearing at the earliest practicable day after the expiration of the notice hereinbefore provided for. An appeal may be taken direct to the Supreme Court of the United

States from the order granting or denying, after notice and hearing, an interlocutory injunction, in such case if such appeal be taken within thirty days after the order, in respect to which complaint is made, is granted or refused; and upon the final hearing of any suit brought to suspend or set aside, in whole or in part, any order of said commission the same requirement as to judges and the same procedure as to expedition and appeal shall apply. (Oct. 22, 1913, c. 32, 38 Stat. 220.)"

"Sec. 47a. (Judicial Code, Section 210.) *Appeal to Supreme Court from final decree; time for taking; priority.* A final judgment or decree of the district court in the cases specified in section 44 of this title may be reviewed by the Supreme Court of the United States if appeal to the Supreme Court be taken by an aggrieved party within sixty days after the entry of such final judgment or decree, and such appeals may be taken in like manner as appeals are taken under existing law in equity cases. And in such cases the notice required shall be served upon the defendants in the case and upon the attorney general of the State. The district court may direct the original record instead of a transcript thereof to be transmitted on appeal. The Supreme Court may affirm, reverse, or modify as the case may require, the final judgment or decree of the district court in the cases specified in section 44 of this title * * *."

B.

Date of Decree and Date of Application for Appeal.

The decree sought to be reviewed was entered on the 17th day of October, 1931. The application for the appeal was submitted on the 19th day of October, 1931, and the appeal allowed on the same day.

As the Record has not yet been printed, citations thereto are impossible.

C.

Nature of Case and Rulings Below; This is a Consolidated Case.

On July 31, 1931, the Transit Commission of the State of New York filed a petition in the United States District Court for the Southern District of New York against the United States of America and the Long Island Railroad Company, pursuant to Sections 41-(27), 41-(28) and 44, Title 28 of the United States Code. The petition prayed that the District Court set aside and annul an order of the Interstate Commerce Commission made on April 10, 1930, as modified on June 13, 1931. The order of the Interstate Commerce Commission sought to be set aside and annulled was a certificate of public convenience and necessity to the Long Island Railroad Company permitting it to abandon service on its "Whitestone Branch" on October 15, 1931.

On September 1, 1931, the State of New York filed an identical petition against the same parties and seeking the same relief.

Respondents in both suits duly filed answers.

The Interstate Commerce Commission intervened in both suits and filed answers.

On September 17, 1931, upon the application of the Commission and the State, an order to show cause was made pursuant to Section 47, Title 28 of the United States Code, convening a special court of three judges, of whom one was a circuit judge, and requiring the respondents to show cause before that court on September 30, 1930, why the order of the Interstate Commerce Commission should not be temporarily enjoined.

At the hearing held on the order to show cause, on September 30, 1931, the two suits were consolidated. All parties rested on the record before the Interstate Commerce Commission.

On October 15, 1931, the Court handed down an opinion holding that the application for interlocutory injunctions should be denied and the petitions dismissed.

On October 17, 1931, a decree was made and entered denying the applications for interlocutory injunctions and finally dismissing the petitions. An appeal from said decree was applied for and allowed on October 19, 1931.

D.

Cases Believed to Sustain Jurisdiction.

This Court has repeatedly taken jurisdiction of direct appeals from decrees of district courts granting or refusing to grant interlocutory injunctions against the enforcement of orders of the Interstate Commerce Commission and from final decrees granting or refusing to grant such relief. A case discussing this statute and its meaning and effect is *Louisville & Nashville R. R. Co.* v. *United States*, 238 U. S. 1.

Other direct appeals taken under this statute in which this Court exercised jurisdiction are *New England Divisions Case*, 261 U. S. 184; *Manufacturers R. R. Co.* v. *United States*, 246 U. S. 457.

Cases in which this Court exercised jurisdiction over orders of the Interstate Commerce Commission authorizing abandonment of branch lines are *Colorado* v. *United States*, 271 U. S. 153; *Texas* v. *Eastern Texas R. R. Co.*, 258 U. S. 204.

In the *Colorado* case, the Court said (p. 161):

> "The case is here on direct appeal under the Act of October 13, 1931, c. 32, 38 Stat. 208, 220. The order is assailed as void in so far as it authorizes abandonment and discontinuance of operation in intra-state traffic. The remedy pursued is the appropriate one."

We respectfully submit that this Court has jurisdiction of this appeal by virtue of Sections 41, 41-(27), 41-(28), 44, 47 and 47a, Title 28 of the United States Code.

GEORGE H. STOVER,
Solicitor for Appellant
Transit Commission.

JOHN J. BENNETT, JR.,
Solicitor for Appellant
State of New York.